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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

No. 664

PIEDMONT AND NORTHERN RAILWAY COMPANY, PETITIONER,

v.

INTERSTATE COMMERCE COMMISSION, SOUTHERN RAILWAY COMPANY, CHARLESTON & WESTERN CAROLINA RAILWAY COMPANY, ATLANTIC COAST LINE RAILROAD COMPANY, LOUISVILLE & NASHVILLE RAILROAD COMPANY, CAROLINA, CLINCHFIELD & OHIO RAILWAY, CAROLINA, CLINCHFIELD & OHIO RAILWAY OF SOUTH CAROLINA, AND CLINCHFIELD NORTHERN RAILWAY OF KENTUCKY, RESPONDENTS.

SUPPLEMENTAL BRIEF FOR PIEDMONT AND NORTHERN RAILWAY COMPANY, PETITIONER.

H. J. HAYNSWORTH,
R. S. HUTCHINSON,
W. S. O'B. ROBINSON, JR.,
Counsel for Petitioner.

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SUPPLEMENTAL BRIEF FOR PIEDMONT AND NORTHERN RAILWAY COMPANY, PETITIONER.

Statement of Case.

To the statement of the case contained in the petition for a writ of certiorari (pp. 2-9), petitioner desires to add the following statement of the facts on which it relies in support of the contention that its railway is "an interurban electric railway, which is not operated as a part or parts of a general steam railroad system of transportation":

Until the Commission's ruling of April 3, 1928, in *Proposed Construction of Lines by Piedmont and Northern Railway Company*, 138 I. C. C. 363, petitioner's railway had been officially treated and dealt with by the Interstate Commerce Commission, the U. S. Railroad Administration, the U. S. Labor Board and other federal authorities as an interurban electric railway. (R. 173, 362-365, 450, 451). It has made reports of its operations and finances to the Interstate Commerce Commission under the accounting rules governing electric railways. (R. 365). It was taken over by the government under the proviso contained in the seventh paragraph of Section I of the Federal Control Act of March 21, 1918, (40 Stat. L. 451), including within "Federal Control" interurban electric railways whose principal source of operating revenue was freight traffic (U. S. House Hearings, 66th Congress, First Session, Vol. 15, p. 2796). The Commission on October 12, 1920, ruled informally that it was an interurban electric railway not operated as a part of a general steam railroad system of transportation, and that it was therefore within the exemption contained in Section 20a exempting such railways from the authority of the Commission over the issuance of carrier securities. (R. 362). On December 11, 1920, the U. S. Railroad Labor Board ruled in Decision No. 33, Docket 26-a, that for the same reason it was not subject to the jurisdiction of the Labor Board. (R. 173). It is paid by the Post Office Department for transporting United States mail as an interurban electric railway, in accordance with the order of the Interstate Commerce Commission of August 7th, 1920, in Electric Railway Mail Pay, 58 I. C. C., 455. (R. 361).

Its lines connect and tie in with the street railway systems in the cities and towns through which it operates.

(R. 380). Of its main line mileage 15.13 miles is operated jointly with street car lines. (R. 184). The first properties acquired were the street railway properties in Anderson, Greenville and Charlotte, which were acquired in order that the lines to be built between the cities might be tied in with the street railway systems, thus affording these lines access to and terminals in the principal cities en route and assuring the interurban lines of trackage rights over the street railway systems. (R. 380).

On March 10, 1910, the Greenville, Spartanburg and Anderson Railway Company was incorporated under the general laws of the State of South Carolina. (R. 143). It purchased the existing interurban electric railway between Belton and Anderson, South Carolina, a distance of about 10½ miles, and constructed the line in South Carolina from Greenwood to Spartanburg. (R. 382).

On January 6, 1910, the Piedmont Traction Company was incorporated under the laws of the State of North Carolina as a street railway company, and constructed the line in North Carolina between Gastonia and Charlotte, and also the street railway system in Gastonia. (R. 143, 382).

The Piedmont and Northern Railway Company was incorporated by Special Act of the Legislature approved February 24, 1911, (R. 156), and thereafter the properties formerly owned and operated by the Piedmont Traction Company and the Greenville, Spartanburg and Anderson Railway Company were conveyed to it. These properties included the line from Charlotte to Gastonia, the street railway system in Gastonia, trackage rights over the street railway system in Charlotte, the lines in South Carolina from Greenwood to Spartanburg, and

from Anderson to Belton, and trackage rights over the street railway systems in Anderson and Greenville. (R. 382.)

Petitioner's railway is, and has always been, operated exclusively by electricity as a motive power, (R. 386); and it is not, and has never been, operated as a part of any steam railroad system of transportation. (R. 387).

The voltage used in the operation of petitioner's railway is 1500 direct current supplied through an overhead trolley supported by poles, (R. 310, 387), as compared with 3000 volts direct current or 11,000 alternating current ordinarily used on electrified sections of steam railroads. (R. 347). The volume and character of voltage required on an electric railroad is determined by the character of service to be performed and the volume of traffic to be moved; where traffic is moved in small units and at frequent intervals the lower voltage of 1500 D. C. is suitable and feasible, but where traffic is heavy, moving less frequently and in heavier train loads the higher voltage of 3000 D. C. or 11,000 A. C. is required. (R. 347).

The overhead construction and power supply of petitioner's railway is similar to that which was used on many of the early electric railways constructed about 1902, (R. 310, 311); and differs radically from the overhead construction in use on electrified sections of steam railroads. (R. 312, 348).

The substation capacity on petitioner's railway is approximately 75 Kilowatts per mile, whereas in steam railroad electrification it is never lower than 150 and runs as high as 1000 Kilowatts per mile. (R. 319). The substation capacity is low not only in respect of individual units, but also in respect of the total capacity of the en-

tire road. For example, the total capacity of petitioner's railway consisting of 129 miles is 10,600 Kilowatts, as compared with 36,000 Kilowatts on the electrified section of the Delaware and Lackawanna, consisting of 160 miles. (R. 370).

If petitioner were to change its railway and equipment so as to be able to haul larger trains and use larger locomotives, (such as those used on electrified sections of steam railroads), the whole road would have to be revised, the existing substations abandoned and others built in their place. (R. 370).

Petitioner's signal system is a selective control block system which would not be suitable for use on a main line steam railroad. (R. 311, 376).

Petitioner's locomotives vary in weight from 50 to 100 tons, (R. 316), and are decidedly lighter and smaller than those in use on electrified divisions of steam railroads, (R. 344, 345), and would not be suitable or feasible for use on an electrified division of a steam railroad. (R. 345, 370). All the locomotives are designed so that they can be used on every mile of petitioner's railway, and in this respect also they differ from the practice on electrified divisions of steam railroads where several classes of locomotives are used for different purposes, such as one type for switching operations and another for main line operations. (R. 370). Petitioner's locomotives are the type commonly known as interurban locomotives; they are constructed on swivel type trucks, whereas locomotives on electrified sections of steam railroads have a rigid wheel base. (R. 316, 317).

The passenger cars are motivated by self-contained motor units instead of being drawn by locomotives; they

are lighted in series from the trolley, are equipped with radial drawbars enabling them to make sharp turns; all but six of the twenty-two passenger cars are equipped with double-end control so that they may be operated from either end; and all of them are equipped with multiple unit control so that if two of them are coupled together they may be operated by one motorman. (R. 315). Its passenger cars make frequent stops, averaging 1.2 miles apart. (R. 169). Its freight trains are operated in small units and at frequent intervals; they set out and pick up freight all along the line; and use the street railway lines to pick up and deliver freight within the cities. (R. 172, 179, 373, 374, 375).

Question Presented.

The question presented is whether or not petitioner's railway is "an interurban electric railway, which is not operated as a part or parts of a general steam railroad system of transportation," within the meaning of the language of Section I, Paragraph 22, of the Interstate Commerce Act, as amended by Transportation Act, 1920, (49 U. S. C. A., Sec. I(22)), excluding such railways from the scope of the provisions of Paragraph 18 which prohibits any carrier by railroad subject to the Act from undertaking any extension of its lines or construction of new lines, without first obtaining from the Interstate Commerce Commission a certificate of public convenience and necessity.

This question is raised by Assignments of Error VI to XXI, (R. 496-502), and by the petition for the writ of certiorari.

ARGUMENT.

V.

The language of Paragraph 22 of Section I of the Interstate Commerce Act, as amended by Transportation Act, 1920, exempting "interurban electric railways which are not operated as a part or parts of a general steam railroad system of transportation" from the scope of the provisions of Paragraph 18, being plain and unambiguous, especially when read in connection with the other provisions of the Act dealing with electric railways, leaves no room for a construction rejecting the literal meaning of its terms.

Paragraph 22 makes the test of Federal jurisdiction over the construction and abandonment of lines by interurban electric railways depend solely on whether or not such railways are operated as a part or parts of a general steam railroad system of transportation. If they are so operated the Interstate Commerce Commission has jurisdiction. If they are not so operated jurisdiction is left with the state authorities.

The language of the statute is plain and unambiguous and leaves no room for a construction which would make the jurisdiction of the Commission over the construction of electric railways depend upon the effect which the construction would have in diverting interstate traffic from other carriers by railroad, who are subject to the Act.

In *Crooks v. Harrelson*, 282 U. S. 55, 75 L. ed. 156, the court in disposing of a contention that the literal meaning of a section of the Revenue Act of 1918 should be rejected because it would lead to absurd results, said:

"It is urged, however, that if the literal meaning of the statute be as indicated above, that meaning should be rejected as leading to absurd results, and a construction adopted in harmony with what is thought to be the spirit and purpose of the act in order to give effect to the intent of Congress. The principle sought to be applied is that followed by this Court in *Church of the Holy Trinity* v. *United States*, 143 U. S. 457, 36 L. ed. 226, 12 S. Ct. 511; but a consideration of what is there said will disclose that the principle is to be applied to override the literal terms of a statute only under rare and exceptional circumstances. The illustrative cases cited in the opinion demonstrate that to justify a departure from the letter of the law upon that ground, the absurdity must be so gross as to shock the general moral or common sense. Compare *Pirie* v. *Chicago, Title & T. Co.*, 182 U. S. 438, 451, 452, 45 L. ed. 1171, 1178, 1179, 21 S. Ct. 906. And there must be something to make plain the intent of Congress that the letter of the statute is not to prevail. *Treat* v. *White*, 181 U. S. 264, 268, 45 L. ed. 853, 854; 21 S. Ct. 611."

"Courts have sometimes exercised a high degree of ingenuity in the effort to find justification for wrenching from the words of a statute a meaning which literally they did not bear in order to escape consequences thought to be absurd or to entail great hardship. But an application of the principle so nearly approaches the boundary between the exercise of the judicial power and that of the legislative power as to call rather for great caution and circumspection in order to avoid usur-

pation of the latter. *Monson* v. *Chester*, 22 Pick. 385, 387. It is not enough merely that hard and objectionable or absurd consequences, which probably were not within the contemplation of the framers, are produced by an act of legislation. Laws enacted with good intention, when put to the test, frequently, and to the surprise of the law maker himself, turn out to be mischievous, absurd or otherwise objectionable. But in such case the remedy lies with the law making authority, and not with the courts. See *Re Alma Spinning Co.* L. R. 16 Ch. Div. 681, 686; 7 Eng. Rul. Cas. 589; *Rex* v. *Commissioners of Navigation*, 5 Ad. & El. 804, 816; 111 Eng. Reprint, 1370; *Abley* v. *Dale* (1851) 20L. J. C. P. N. S. 33, 35. And see generally *Chung Fook* v. *White*, 264 U. S. 443, 445, 68 L. ed. 781, 782, 44 S. Ct. 361; *Commissioner of Immigration* v. *Gottlieb*, 265 U. S. 310, 313, 68 L. ed. 1031, 1033; 44 S. Ct. 528."

In *United States* v. *Missouri P. R. Co.*, 278 U. S. 269, 73 L. ed. 322, in interpreting Paragraph 4 of Section 15 of the Interstate Commerce Act, as amended by the Transportation Act of 1920, the court, in an opinion by Mr. Justice Butler, said:

"The language of that provision is so clear and its meaning so plain that no difficulty attends its construction in this case. Adherence to its terms leads to nothing impossible or plainly unreasonable. We are therefore bound by the words employed and are not at liberty to conjure up conditions to raise doubts in order that resort may be had to construction. It is elementary that where no ambiguity exists there is no room for construc-

tion. Inconvenience or hardships, if any, that result from following the statute as written, must be relieved by legislation. It is for Congress to determine whether the Commission should have more authority in respect of the establishment of through routes. Construction may not be substituted for legislation. *United States* v. *Wiltberger*, 5 Wheat. 76, 95, 5 L. ed. 37, 42; *United States* v. *Fisher*, 2 Cranch, 358, 386, 2 L. ed. 304, 313; *Lake County* v. *Rollins*, 130 U. S. 662, 670, 32 L. ed. 1060, 1063, 9 Sup. Ct. Rep. 651, *Caminetti* v. *United States*, 242 U. S. 470, 61 L. ed. 442, L. R. A. 1917F, 502, 37 Sup. Ct. Rep. 192, Ann. Cas. 1917B, 1168; *Ex parte Public Nat. Bank*, 278 U. S. 101, ante, 202, 49 Sup. Ct. Rep. 43; *United States* v. *Colorado & N. W. R. Co.*, 15 L. R. A. (N. S.) 167, 85 C. C. A. 27; 157 Fed. 321; 13 Ann. Cas. 893."

In *Sturges* v. *Crowninshield*, 4 Wheat. 122, 202, Chief Justice Marshall said:

"It would be dangerous in the extreme to infer that from extrinsic circumstances, that a case for which the words of an instrument expressly provide, shall be exempted from its operation. Where words conflict with each other, where the different clauses of an instrument bear upon each other, and would be inconsistent unless the natural and common import of words be varied, construction becomes necessary, and a departure from the obvious meaning of words is justifiable. But if, in any case, the plain meaning of a provision, not contradicted by any other provision in the same instrument, is to be disregarded, because we believe the framers of that instrument could not

intend what they say, it must be one in which the absurdity and injustice of applying the provision to the case would be so monstrous that all mankind would, without hesitation, unite in rejecting the application."

In *Pirie* v. *Chicago Title & Trust Co.*, 182 U. S. 438, 451, Mr. Justice McKenna said:

"It is but one rule of construction that the consequences of a statute may be considered in construing its meaning. The rule may be counterpoised by other rules; it may be prevailed over by one which requires the intent of the statute to be looked for in its words. Where they are clear and involve no absurdity, they are its only expositors. It is not contended that the provisions which we are considering are not clearly expressed adequate to convey a definite meaning. It is true, it is urged that the word 'preference' imports the conscious participation of the creditor and debtor in the same intent. We cannot concur in that view, and we are brought to the consequences of the construction which we have put upon Section 60. It is denominated absurd by appellants. What is the test of absurdity? The contradiction of reason, it may be said, and to make an immediate application to legislation the contradiction of the reason which grows out of the subject-matter of the legislation and the purpose of the legislators. But all legislation is not simple, nor its consequences obvious, or to be controlled, even if obvious. Whether there should be any legislation at all, and its extent and form, may be matters of dispute. Its consequences may be viewed with favor or with

alarm; some regretted, but accepted as inevitable, —accepted as the shadow side of the good. In such situation it is for the legislature to determine, and it is very certain that the judiciary should not refuse to execute that determination from its view of some consequences which, (to use the thought and nearly the words of Chief Justice Marshall), may have been contemplated and appreciated when the Act was passed, and considered as overbalanced by the particular advantages the Act was calculated to produce."

At the time of the adoption of the Transportation Act, 1920, electric railways of the type of petitioner's railway had been treated and described as interurban electric railways under several prior Acts of Congress dealing with electric railways.

Under the Act of June 18, 1910, Chap. 309, 36 Stat. at L., 539, 552, the Commission had established, for freight, through routes and joint rates between interurban electric railways and steam railroads. *Chicago & Milwaukee Electric R. Co.* v. *Illinois C. R. Co.*, 13 I. C. C. 20; *Cedar Rapids & I. C. R. & Light Co.* v. *Chicago & Northwestern R. Co.*, 13 I. C. C. 250; *Louisville Board of Trade* v. *Indianapolis, Columbus & Southern Traction Co.*, 27 I. C. C. 499; *St. Louis, Springfield & Peoria R. R.* v. *P. P. & U. Ry. Co.*, 26 I. C. C. 226; and numerous other cases cited in *United States* v. *Village of Hubbard*, 266 U. S. 474, Note 4.

The Federal Control Act of March 21, 1918, 40 Stat. L., 451, contained the proviso to Paragraph 7 of Section I, "that nothing in this paragraph shall be construed as including any street or interurban electric railway which

has as its principal source of operating revenue urban, suburban or interurban passenger traffic or sale of power, heat and light, or both." Several interurban electric railways, including petitioner's railway, were taken under Federal Control under this proviso of the Act. (House Hearings, 66th Congress, First Session, Volume 15, p. 2796).

On July 2, 1918, Congress passed the Railway Mail Pay Service on Urban and Interurban Electric Railways Act, 40 Stat. L., 748, 39 U. S. C. A., Secs. 569, 570, in which the Commission was empowered and directed to "fix and determine from time to time the fair and reasonable rates and compensation for the transportation of mail matter by urban and interurban electric railway common carriers."

In *Electric Railway Mail Pay*, 58 I. C. C. 455, the Commission complying with this direction filed its report on August 7, 1920, saying:

> "There are three kinds or classes of electric lines, each of which is employed to some extent in the carriage of the mails. They are known as urban or city lines, suburban lines, or interurban lines. Urban lines comprise those operating wholly within cities. * * *
>
> "Interurban lines, as the term implies, run between two or more cities. They are operated in some respects like steam roads, so far as mail transportation is concerned. Many of them do considerable freight and express business in addition to their passenger business."

Petitioner has been paid for transporting United States mail in accordance with the order of the Interstate Commerce Commission made in the Electric Railway Mail Pay Case. (R. 361, 362).

The development of interurban electric roads had become general about 1902; since 1915 they had been required to file with the Commission annual reports of their finances and operations; and in exercising authority over their passenger fares the Commission had made no distinction between those interurban roads which were engaged in the general transportation of freight in addition to their passenger and express business, and those which were not. *United States* v. *Village of Hubbard*, 266 U. S. 474.

In *Chicago & M. Electric R. Co.* v. *Illinois C. R. Co.*, 13 I. C. C. 20, decided in 1908, the complainant (which is referred to in the Village of Hubbard case as an interurban electric railroad) was described in part as follows:

> "The tracks are laid with 80-pound rails and are well ballasted. The culverts and bridges are constructed of reinforced concrete. The record fully discloses and the defendants admit that so far as construction is concerned the complainant is able not only to handle freight in carloads but in trains. . . . The complainant has through routes and joint rates in effect with the Wisconsin Central Railroad Company."

In *Cedar Rapids & I. C. R. Co.* v. *Chicago & N. W. R. Co.*, 13 I. C. C. 250, decided in 1908, and also referred to in the Village of Hubbard case, the complainant was described as follows:

"Its roadbed, as is admitted by the defendant, is constructed in a substantial manner and in conformity with the standard that is usual with the smaller steam railroads in that section of the country. * * * The road crosses 28 well-built bridges and culverts constructed, as the complainant's witnesses state, upon plans that are practically identical with those used by the defendant in similar structures on its lines. In other respects the record satisfactorily shows that the complainant's line is capable of moving freight in trainloads as well as in carloads."

In *St. Louis, Springfield & Peoria R. R., et al,* v. *P. & P. U. Ry. Co.*, 26 I. C. C. 226, decided in 1913, the complainants which constituted the Illinois Traction Company were referred to by the Commission as "lines of interurban electric railway," operating 418 miles of railway and extending from St. Louis, Missouri, on the South, to Peoria, Ill., on the North, and to Danville and Ridge Farm, Ill., on the East, and in part were described as follows:

"The complainants conduct a general passenger and freight business, and their lines are standard gauge with rails and ballast of regular steam-road standard. * * * It is apparent from the evidence that the complainants' equipment is standard and such as may be interchanged in interstate traffic, and that their roadbed and bridges are built so as to permit the passage over them of standard railroad cars."

In *Chicago, Ottowa & Peoria Ry. Co.* v. *Chicago Northwestern Ry. Co.*, 33 I. C. C. 573, decided in 1915, the Commission said:

> "Our authority upon a proper showing to require the establishment by steam railroads of through routes and joint rates with interurban electric railroads engaged in interstate transportation of freight has long been settled."

In *Louisville Board of Trade* v. *Indianapolis, Columbus and Southern Traction Co., et al*, 27 I. C. C. 499, decided in 1913, the Commission established through routes and joint rates "over interurban electric lines between Louisville and points in Indiana." At page 504, the Commission said, "these companies are common carriers and are engaged in interstate traffic; it is therefore their duty, under express and affirmative provisions in the act, to provide cars and other reasonable facilities necessary properly to serve the public."

This history of interurban electric railways "may be noticed in confirmation of the meaning conveyed by the words used" in paragraph 22. *United States* v. *Missouri P. R. Co.*, 278 U. S. 269, 278.

In several sections of the Transportation Act, 1920, Congress provided expressly for the exclusion of certain electric railways from the operation of the powers conferred on the Commission. In each section it used plain language to express its intent. Had Congress intended to make the exclusion of an interurban electric railway from the provisions of paragraph 18 depend upon the character and volume of its traffic, or on whether or not it is operated in competition with steam railroads, it would have used appropriate language to express this

purpose. The failure of Congress to make the exclusion depend upon either of these considerations shows that Congress had no such purpose.

Conclusion

It is respectfully submitted that the decree below should be reversed.

H. J. HAYNSWORTH,
R. S. HUTCHINSON,
W. S. O'B. ROBINSON, JR.,
Counsel for Petitioner.

CHARLOTTE, N. C., April 2, 1932.

ADDENDUM

Petitioner desires to call the Court's attention to the case of *United States* v. *Chicago, North Shore & Milwaukee Railroad Company*, decided by District Judge Chas. E. Woodward, in the U. S. District Court, for the Northern District of Illinois, on March 24, 1932.

The suit was brought to enjoin the defendant from issuing securities without first obtaining the approval of the Interstate Commerce Commission under Section 20a of the Interstate Commerce Act, as amended by Transportation Act of 1920. Paragraph 1 of Section 20a exempts from the scope of the provisions of that section an "interurban electric railway which is not operated as a part of a general steam railroad system of transportation." The Chicago, North Shore & Milwaukee Railroad Company defended on the ground that

it is such an interurban electric railway within the scope of that exemption, and Judge Woodward sustained the defense and dismissed the suit.

As Judge Woodward's decision in the Chicago, North Shore & Milwaukee Railroad Company case has not been reported either officially or in the National Reporter System, we are attaching a copy of it as an appendix hereto.

It will be noted from Judge Woodward's findings of fact that the Chicago, North Shore & Milwaukee Railroad Company is an interstate carrier of freight and passengers of at least as much national importance as petitioner's railroad is now, or would be after the construction of the proposed extensions. The freight revenues of the Chicago, North Shore & Milwaukee Railroad are almost as large as those of petitioner, and in addition the Chicago Railroad has passenger revenues which are even larger than its freight revenues, whereas petitioner through no fault of its own has lost most of its passenger business. The Chicago Railroad competes with steam railroads for both freight and passenger business, and diverts from them both classes of traffic.

If Judge Glenn's construction of the statute had been applied in the Chicago case, that railroad would have been denied the exemption which it claimed; while if Judge Woodward's construction is correct petitioner is entitled to the exemption which it claims. Judge Glenn disregarded the literal meaning of the statute, and adopted a construction which he thought was in harmony with the underlying spirit and purpose of the amendments which the Transportation Act of 1920 introduced into the Interstate Commerce Act.

Judge Woodward adhered to the literal meaning of the language of the statute and came to a decision very nearly, if not exactly, the opposite of Judge Glenn's.

A comparison of the two cases and of the two decisions, one allowing the exemption and the other denying it, makes manifest the confusion which will result unless the statute is construed in accordance with the meaning which its terms plainly import.

Petitioner does not argue that a transcontinental steam railroad, or a steam railroad engaged in the long haul of heavy load traffic and the operation of through passenger trains between widely separated sections of the country, would merely by abolishing steam and adopting electricity as a motive power become an interurban electric railway.

But petitioner is not a railroad of this character. It is interurban, it is operated exclusively by electricity as a motive power, and it is not operated as a part of any steam railroad system of transportation. It is not a carrier of national importance except in the sense that it is engaged in interstate commerce, and by reason of its connections with steam railroads is a part of through routes for the movement of freight. Its freight traffic, while large in comparison with its passenger traffic, is small in comparison with the freight traffic handled by any of the important steam railroads of the country. (R. 374.) It does not operate between large cities, and over its own rails does not reach any important gateway or any port. Its operations are confined to the Piedmont section of North and South Carolina. It moves traffic between points in this section, and into and out of this section from connections with steam railroads. (R. 177, 178.) It has

been constructed and equipped and is maintained and operated in accordance with the standards and practices of those electric railways which by common usage have been known as interurban electric railways. (R. 311-324; 344-349; 368-377.)

Respectfully submitted,

H. J. HAYNSWORTH,
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W. S. O'B. ROBINSON, JR.,

Counsel for Petitioner.

Charlotte, N. C., April 14, 1932.

APPENDIX

IN THE

District Court of the United States Northern District of Illinois Eastern Division

No. 10067

UNITED STATES OF AMERICA

v.

CHICAGO, NORTH SHORE AND MILWAUKEE RAILROAD COMPANY

The above entitled suit coming on to be heard, and the court having heard the evidence and arguments of counsel, and briefs having been filed, and the court being advised in the premises, now finds as

FINDINGS OF FACTS

(1) That this suit was brought and the prayer seeks only to enjoin and restrain the respondent in the future from issuing any capital stock, bonds or other evidence of indebtedness, collectively termed "securities," and from assuming any obligations or liability as guarantor, endorser, surety or otherwise, in respect of the securities of any other person or corporation unless respondent shall have first applied for and obtained the approval and appropriate order from the Interstate Commerce Commission.

(2) CORPORATE HISTORY OF CHICAGO, NORTH SHORE AND MILWAUKEE RAILROAD COMPANY.

The Chicago, North Shore and Milwaukee Railroad Company, and the predecessor corporation, owning and operating, subsequent to March 1, 1920, the properties now owned and operated by it, is and were corporations organized, chartered and existing under and by virtue of the Statutes of the State of Illinois, sometimes described as the General Railroad Laws of the State of Illinois, and more particularly described as "An Act to provide for the incorporation of associations that may be recognized for the purpose of constructing railways, maintaining and operating the same; for prescribing and defining the duties and limiting the powers of such corporations when so recognized, and authorizing the same and all railroad companies of the State to own and hold the stock and securities of railroad companies of other States owning a connecting line," being Chapter 114 of Cahill's 1921 Illinois Revised Statutes.

(3) There are but two statutory enactments in Illinois under which rail carriers may be organized; one is the General Railroad Act and the other is the General Incorporation Act. The General Incorporation Act is commonly used for the organization of street railways and under it the street railway has limited powers of eminent domain. Practically all rail carriers, save street railways, organized in Illinois, are organized under the so-called General Railroad Act because of the very limited powers of eminent domain given corporations organized under the General Incorporation Act. The Chicago Rapid

Transit Company, which operates the intra mural city service over the elevated structure in Chicago is incorporated under the General Railroad Act of Illinois.

(4) The Bluff City Electric Street Railway Company, a street railroad was the original company out of which the properties of the respondent developed. The Bluff City line was in existence prior to 1905. On July 1, 1916, the receiver of the Chicago and Milwaukee Electric Railroad Company of Illinois and the Chicago and Milwaukee Electric Railroad Company of Wisconsin sold at receiver's sale these two properties to the Chicago, North Shore and Milwaukee Railroad. As a result of a later reorganization, at 12:01 A.M., on July 1, 1923, the railroad property of that company was conveyed to the Chicago, North Shore and Milwaukee Railroad Company. On October 6, 1924, this latter company was consolidated with the Chicago, North Shore and Northern Railroad, an Illinois intrastate railway, under the corporate name, Chicago, North Shore and Milwaukee Railroad Company, the respondent, which has owned and operated the properties at all times since then.

(5) TYPE OF CONSTRUCTION OF TRACKS, BRIDGES, ROADBED AND OTHER PHYSICAL PROPERTIES OF THE CHICAGO, NORTH SHORE AND MILWAUKEE RAILROAD COMPANY:

1. Description of Respondent's Line.

(a) The respondent operates a high-speed electrified railroad between Chicago, Illinois, and Milwaukee, Wisconsin, serving states with a total population of approximately four million. The main terminals are

in Chicago and Milwaukee, with branch-line terminals in the cities of Waukegan, Illinois, and Mundelein, Illinois.

(b) The operation in Chicago is over the elevated tracks of the Chicago Rapid Transit Company from 63rd and Dorchester streets on the south side of Chicago, northerly through the Loop district, where the main Chicago passenger terminal is located, to a point at Leland and Wilson Avenues on the north side of Chicago, a distance of approximately 16 miles; thence northerly through Chicago and Evanston to Wilmette, a distance of approximaely 8 miles over elevated, dirt-fill tracks, leased from the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and jointly used with the Rapid Transit Company.

(c) The so-called "Shore Line" route continues north from Linden Avenue in Wilmette through Kenilworth, Winnetka, Glencoe, Highland Park, Highwood, Lake Forest, Lake Bluff and North Chicago Junction, where it joins with the Skokie Valley Line to Zion City and the State line, a distance of 31.77 miles.

(d) The "Skokie Valley Line" departs from the Shore Line route at Howard Street, the north city limit of Chicago, and runs west about three miles to Niles Center, and thence northerly, paralleling the Shore Line, to a junction with the Shore Line at North Chicago Junction, a distance of 36.29 miles.

(e) From the State line, the road continues north via Kenosha and Racine, to Harrison street, Milwaukee, a distance of 35.92 miles. From this point the operation is through the streets, over the tracks of the Chi-

cago and Milwaukee Electric Railway Company, which company is owned by the respondent, a distance of 2.67 miles. Street cars also operate over a small portion of the line from Harrison street to Oklahoma Boulevard, and such operation is under an ordinance authorizing a predecessor of respondent to "operate its interurban cars" over such tracks. Such operation is on the streets in common with vehicular traffic and is controlled in part by "stop and go" lights.

(f) The "Libertyville Branch" extends from Lake Bluff on the Shore Line to Rondout, Libertyville and Mundelein, a distance of 8.8 miles.

(g) The "Waukegan Branch" extends from North Chicago Junction into the City of Waukegan, a distance of 3.29 miles. Respondent performs all of the street car service in Waukegan. Approximately 12 cars are used in this service. The Chicago-Waukegan interurban express trains use the street car tracks in Waukegan. The Waukegan street cars use the main line tracks south from Waukegan to Great Lakes Naval Training Station in common with the respondent's interurban express trains. The operation of the street cars and of the Chicago-Waukegan interurban express trains in Waukegan is in common with other vehicular traffic on the streets. Passengers on the interurban trains of respondent to and from Waukegan are given free transfers which permit them to ride to any point on the street car system within Waukegan.

(h) The total route miles of main line owned and operated by the respondent is 138.38. The total miles of second track is 132.82. The total miles of yard and other track is 42.60. The total number of miles of all

track is 313.81. The total route miles of track operated in city streets is 20.229, which is 14.66 per cent. of the total route miles of track. Respondent operates on many of the city streets in common with street cars and vehicular traffic.

2. Tracks and Rights of Way.

(a) The tracks of the respondent are standard gauge, the owned line for train operation being all double-track with the exception of about 0.67 mile just south of Milwaukee, and about 0.6 of a mile on the Libertyville or Mundelein Branch.

(b) The operation over the lines of the Chicago Rapid Transit Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company is double-track and multiple-track. The operation in Milwaukee is double-track.

(c) The rights of way and tracks of the Chicago and North Western Railway Company parallel the respondent's right of way and tracks, the tracks of these two carriers reaching the same cities between Chicago and Milwaukee.

(d) Of the respondent's total owned tracks, 2.4 miles are laid in paved streets; 0.197 miles are laid in unpaved portion of streets; 2.8 miles are laid in unpaved street area, the track zone not being used for street purposes. In Milwaukee the respondent's passenger trains move over 2.6 miles of track in streets, the track being owned by the Chicago and Milwaukee Electric Railway Company, which company in turn is owned by the respondent. These tracks are used for street railway service.

(e) In Chicago the respondent's passenger and merchandise despatch trains operate over tracks owned by the Chicago Rapid Transit Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, under trackage leases or agreements with those carriers. The miles of track included in this operation, respectively, are: first main track, 16.97 and 7.83; total trackage so operated 33.94 and 15.89, or a total of 39.38 miles of track not owned, but used by the respondent under lease or agreement with those carriers. The operation over the tracks of the Chicago Rapid Transit Company is under a long-term lease.

(f) Respondent owns its right of way from Wilmette to Milwaukee, except for short distances, aggregating about three miles, in a few municipalities through which it runs on public thoroughfares. It owns all of the right of way of the Skokie Valley Line.

(g) The respondent has more than one-half mile of right of way in the Fort Sheridan Military Reservation, which it enjoys under perpetual easement granted by Congress. (See 42 Stat. L., 622-623.)

(h) From Waukegan, north to Milwaukee, the right of way averages about 100 feet in width. South from North Chicago to the connection with the line of the Chicago Rapid Transit Company the right of way averages in width from 25 to 100 feet, the greater part being about 50 feet.

(i) The right of way on the Skokie Valley Line is wide enough to accommodate a four-track line, part of it being used for the steel towers carrying the high-tension transmission line of the Public Service Company of Northern Illinois.

(j) Respondent has acquired part of its right of way through the exercise of the power of eminent domain.

(k) The respondent's roadways and tracks in many places follow the contour of the ground. Its track consists of ties and steel rails of varying weights and types. In many places it uses the High T and girder type rail designed especially for use in paved streets. It also uses frogs and switches designed for paved city track construction. Special steel ties are used for track in pavement.

(l) Respondent has many curves in its main line tracks as well as shop and yard tracks of 100 feet radius or less. This curvature in tracks is common to electric railways which must operate around street corners. Trains of steam railroads could not operate around such curves.

3. Bridges.

(a) Respondent's bridges are built according to steam railway specifications and standards, and are suitable for the operation of standard freight cars of steam railroads.

(b) On the west side, from North Chicago Junction to Milwaukee, the bridges are built according to Cooper's E-40 specifications, and have a standard load capacity sufficient to support two locomotives weighing 146 tons, each with the same distance between the front and rear axle and stipulated or uniform load of 4,000 pounds per foot.

(c) The bridges on the "Shore Line" route between Chicago and North Chicago Junction, which is mainly a passenger line, are built according to Cooper's E-30 specifications, and will support two locomotives weighing 106 tons each and a load of 3,000 pounds per lineal foot.

(d) The carrying strength or load capacity of the bridges on its owned main line will support the average steam railroad train.

4. Roadbed.

(a) The grades on the "Shore Line" of the respondent generally follow the topography of the ground, being less than 0.4 of one per cent. on most of the tracks. The roadbed of the "Shore Line" is suitable for the operation over it of standard freight cars of steam railroads.

(b) Grades as high as 7 per cent. are encountered in the main line track of respondent. The Skokie Valley Line connects at Howard street with the Shore Line, and has a grade of 3 per cent. at that point. It also has a grade of 1.6 over a viaduct or bridge that crosses the highway near the Sanitary District plant. Respondent uses a short temporary cross-over track during construction work in paved streets. All main line trains operate over these temporary cross-over tracks. It would be impossible for steam line trains to use this type of cross-over track.

(c) The roadbed is ballasted with rock, slag, gravel and cinder ballast. More than three-fourths of the Skokie Valley Line is rock-ballasted. The ballast and

cross ties are the same as those ordinarily used by steam roads. Except for short distances where steel ties, or combination steel and wood ties are necessary, the ties used are oak, cedar and pine.

(d) Respondent's signals, switches and crossing protection devices are similar to those used on steam railways generally, the respondent's line being equipped with the most modern railroad block signal systems.

5. Interchange Track Connections.

The tracks of the respondent are physically connected with the tracks of four steam railroads at thirteen points on its line, and with three electric railroads at three points on its line. Carload freight shipments can be and are interchanged with steam railroads, without breaking bulk, at eight different points. The respondent has interchange track connections with the Soo Line, Elgin, Joliet and Eastern, the Chicago and North Western, and the Chicago, Milwaukee, St. Paul and Pacific, all steam railroads. The total capacity of the respondent's interchange tracks at these interchange points is approximately 365 freight cars.

6. Industry Tracks.

(a) Respondent has 108 industry, team and switch tracks at 37 stations on its line, which serve about 40 different types of industries and the general public. The respondent constructed more than three miles of side-tracks into industrial yards to increase its facilities for handling carload freight.

(b) In 1930 the respondent had 12 new industries located on its line. These industries are engaged in *manufacturing or handling* of coal, lumber, and building materials.

(c) The largest industrial or team-track facilities are at Waukegan, where the respondent has 14 industry or team tracks with a capacity of 209 freight cars or 155 passenger cars. Similar tracks at North Chicago will accommodate 109 cars; at Racine Quarry, 145 cars; at Crawford Avenue, 174 cars; at Kostner Avenue, 111 cars; and at Liberty Lake, 127 cars.

(d) The total capacity of respondent's industry or team tracks is 1,801 freight cars or 1,364 passenger cars.

7. Yards and Terminals.

(a) Respondent has 19 passing tracks with lengths varying from 300 feet to 1,900 feet, many of which are used as team or storage tracks, as well as for train passing.

(b) The respondent has a freight classification yard at Pettibone which it uses for classifying cars of inbound and outbound freight and making up trains for further movement. This yard consists of 11 tracks and has a capacity of 161 freight cars.

8. Passenger Stations and Freight Depots.

(a) The respondent maintains on its entire system of railroad 224 stations or stopping points at which it receives and discharges passengers. At 51 of these

stations there is a station agent who sells passenger tickets and performs other duties customarily performed by station agents. At 96 of these points the respondent maintains shelters and platforms. At 35 of these points the respondent maintains platforms only. At 42 points certain of the respondent's trains stop at streets or highways, where no facilities or platforms are provided.

(b) The main passenger station of respondent in Chicago is in a store building having a front width of 25 feet on Wabash Avenue between Adams street and Jackson Boulevard. This station is connected with the elevated structure of the Chicago Rapid Transit Company by a bridge leading to the elevated platform above the sidewalk. All stations on the elevated structure of the Chicago Rapid Transit Company in Chicago used by the respondent are used in common with the Rapid Transit Company. Respondent conducts no freight business at any of these stations. Several stations used by respondent on its owned line outside of Chicago are in store buildings adjacent to track on city streets.

(c) Two stations, with ticket agents, are maintained at Wilmette, Winnetka and Island Park. At Ravinia the respondent has a station consisting of a good type of small modern brick building, with platforms and canopies. At Central Avenue, the respondent's station is separated from the railway track by a portion of paved street and is located in a store building, part of which the respondent leases. It has the ordinary station facilities. At Highwood the respondent has a frame building, with ticket agent, platforms, ticket booth, and canopies partly covering the platform.

At Lake Forest the respondent maintains a very fine brick and stone station, being equipped with modern facilities. At Zion the respondent maintains a commodious brick station, with a large waiting room for men, a large waiting room for women, and with long platforms on both sides of its track. At Kenosha the respondent has a modern, up-to-date brick, concrete and stucco station building with a large waiting room, toilet facilities and rest rooms, and with brick and concrete platforms with canopy over a portion of the platform. On the Skokie Valley Line the respondent maintains stations at nine points which are combined depots and residences for the station or ticket agents, the buildings being five-room bungalows with one additional room adjoining the track being used for station purposes. The employees of the station use the bungalows as dwellings for which no rent is charged by the respondent.

(d) Freight depots, or buildings used exclusively for receiving and delivering freight, are maintained by the respondent at several of its stations. At Milwaukee there is a freight station of brick construction with sheltered platform to accommodate loading and unloading to or from vehicles. At Evanston there is a freight depot of brick construction used jointly with the Chicago, Milwaukee, St. Paul and Pacific Railroad.

(e) At a number of points on the respondent's line freight stations are maintained to accommodate the respondent's merchandise despatch or less-than-carload freight service. To accommodate this same service the respondent maintains in Chicago a number of receiving

stations. A considerable portion of the merchandise dispatch traffic is handled in Chicago at the Montrose Avenue station.

(f). The respondent maintains loading and unloading facilities in Chicago, Milwaukee and Racine for the accommodation of its ferry truck service.

9. Offices and Shops.

(a) The executive offices of the respondent are located in the Commonwealth Edison Building, 72 West Adams street, Chicago, Illinois. Its general operating offices are located at Highwood, Illinois.

(b) Respondent has repair shops adequate for the maintenance and repair of its rolling stock, its general repair shops being located at Highwood, Illinois.

(c) The 114 freight cars of respondent which are interchangeable with steam railroads are kept in repair at respondent's repair shop at Pettibone yard.

(d) Respondent has not found it necessary to have repairs, either to locomotives or to passenger or freight cars, made at outside shops, but has been able to make all necessary repairs at its own shops.

10. Electrical Transmission Line.

(a) On the Skokie Valley Line overhead power is conveyed by catenary type trolley lines supported on double standards, permitting high-speed operation.

(b) On the Shore Line the trolley wire is suspended from and between wooden poles, and is about 18 feet above the track.

(c) On the tracks of the Chicago Rapid Transit Company, the Chicago, Milwaukee, St. Paul and Pacific Railroad, and on respondent's tracks for about two miles between Howard street, in Chicago, and Crawford Avenue, in Niles Center, the current is fed by the third-rail system. A portion of the line of the third-rail, north of Howard street, has an overhead trolley in addition to the third-rail, for use in connection with the switching of freight for the Chicago, Milwaukee, St. Paul and Pacific Railroad.

(d) Respondent uses 600 volts direct current for its power. The electric power of 600 volts used by respondent is substantially less than the voltage used on most electricified sections of steam railroads. The use of higher voltage than 600 on lines that operate over paved streets, as does the respondent, would create a hazardous condition for the public in the event the line broke and the wire dropped.

(e) Six hundred volts direct current is sufficient to haul respondent's loaded equipment, and is the same voltage now used by the Pennsylvania Railroad for its entrance into and terminal operations at New York City. On electrified portions of steam lines other carriers use from 1,500 to 11,500 volts, and the Pennsylvania Railroad is changing to 11,000 volts.

11. Investment in Road and Equipment.

Respondent's investment in road and equipment on December 31, 1930, was $42,438,676.67.

(6) ROLLING STOCK AND OTHER MOBILE EQUIPMENT.

1. Locomotives.

(a) Respondent owns a total of 7 electric locomotives. Two of them are electric storage battery locomotives; 5 of them are operated by power transmitted from the trolley wire. Two of these locomotives will haul 1,200 tons per train; 3 will haul 600 tons per train, and 3 will haul 400 tons per train. Steam railroads haul several thousand tons in a train. These locomotives weigh 70, 60 and 50 tons respectively. The lightest weight of electric locomotive used on electrified section of steam railroads shown by evidence is 100 tons, and the heaviest weigh as much as 288 tons.

(b) The respondent has, within the past five years, used steam locomotives then owned by it for hauling revenue freight.

2. Merchandise Despatch Cars.

(a) Respondent uses a baggage type of passenger car in transporting its less than carload merchandise despatch freight. Most of these cars are equipped with motors. Some are trailers. The longest car is 50' 5". The widest is 9' 5½". The baggage type cars which are wider than 9 feet are not used in the operation into the cities of Chicago and Milwaukee, as a car greater than 9 feet in width cannot operate on the tracks used by the respondent in either of these cities. The capacity of these cars is from 20,000 to 35,000 pounds.

The average capacity of steam railroad freight cars is about 80,000 pounds. The maximum capacity is as high as 145,000 pounds.

(b) Respondent also owns and uses refrigerator cars, similar to the motor merchandise despatch cars.

3. Freight Equipment.

(a) Respondent owns 206 freight cars. Of that number 71 are dump cars, 2 are tank cars used for week killing, 2 are refrigerator cars equipped with electric refrigeration not used to carry freight. The dump cars are occasionally used in commercial service for hauling sand, gravel and stone where necessary to dump such material along the side of the track or off trestles. Respondent owns 114 freight cars which can be interchanged with steam railroads. The other freight cars are too light in construction to be accepted by steam railroads.

The Chicago, Milwaukee, St. Paul and Pacific Railroad owns an average of 6.29 freight cars per mile of road. The Chicago and Northwestern owns an average of 8.05 freight cars per mile of road. The Minneapolis, St. Paul and Sault Ste. Marie owns an average of 5.06 freight cars per mile of road. Class I steam railroads in the United States own an average of 9.7 freight cars per mile of road. The North Shore owns an average of 1.49 freight cars per mile of road.

(b) One hundred and fourteen of respondent's revenue freight cars are interchangeable with steam railroads. These cars have no electrical equipment and are exactly the same as steam railroad freight cars,

being identical in equipment, brakes, safety appliances, automatic couplers, and other devices.

(c) Respondent's freight cars have capacities of from 80,000 to 100,000 pounds each. It operates 36 gondolas with capacities of 100,000 pounds each; 52 gondolas with capacities of 80,000 pounds each, and its flat cars will carry maximum loads up to 80,000 pounds each. Eight of the respondent's 10 box cars will load 60,000 pounds each and the remaining two have a capacity of 45,000 pounds each.

4. Passenger Equipment.

(a) Respondent's passenger equipment consists of 182 units, of which 150 are equipped with motors and 32 are operated as trailers. This equipment includes nine dining cars and five observation-parlor cars.

(b) Respondent's passenger equipment is not interchangeable with steam railroads because of appurtenances for electrical operation and certain departures from the Master Car Builders' standards.

(c) Of respondent's 162 passenger cars, 90 weigh 100,000 pounds or more, and only nine weigh less than 75,000 pounds.

(d) Four of respondent's observation-parlor cars will seat 31 passengers each, and the fifth will seat 16 passengers. Its ordinary passenger cars will seat 30 passengers each.

(e) Most of the passenger and baggage car equipment is motorized. A few passenger cars have control

apparatus without motors so that they may be placed ahead of motor cars in trains. The widest passenger car used by respondent is 9 feet. The longest car is 56' ¾". The narrowest of steam railroad cars shown of record is 10 feet in width and the shortest in length is 72' 7½". The passenger equipment of respondent has 4-wheel trucks. The passenger equipment of steam railroads in general use have 6-wheel trucks. The curvatures on the lines of respondent are too sharp to permit the operation of cars with 6-wheel trucks. Radial draw bars are used on respondent's cars to permit trains to operate around short curves. More than 40 passenger cars of respondent are street cars which are used exclusively in street car operation.

5. Ferry Truck or Container Cars.

(a) The respondent's equipment includes a number of "ferry truck" or container cars, which are hauled from the shipper to the respondent's freight depots by tractors and then carried over respondent's line mounted two to a freight car.

(b) These ferry trucks or container cars are similar to those of the Chicago and Northwestern Railway and are used for the same purpose.

(7) PUBLICATION OF FREIGHT RATES AND PASSENGER FARES, ANALYSIS OF TRAFFIC HANDLED, AND METHOD OF OPERATION:

1. Tariffs, Powers of Attorney, and Concurrences.

(a) Respondent has on file with the Interstate Commerce Commission a total of 221 effective powers of attorney and concurrences issued by it. It publishes

16 local freight tariffs and participates as initial carrier in 206 freight tariffs, and as a delivering or intermediate carrier in more than 800 freight tariffs, thus providing freight rates in conjunction with steam railroads to and from practically every state in the United States, as well as to points in Canada and Mexico.

(b) Through railroad and pullman tickets are sold at respondent's stations to any part of the United States, Canada and Mexico.

(c) Published tariffs on file with the Interstate Commerce Commission permit the respondent to sell passenger tickets for trips around the world.

(d) Respondent publishes its freight and passenger tariffs through the same tariff publishing agents used by all steam railroads, and these agents publish many of respondent's rates for the steam roads and for respondent in the same joint tariffs.

(e) In assessing its local passenger fares, the respondent uses the same per mile basis as used by all steam railroads, namely, 3.6 cents per mile.

2. Passenger Service.

(a) Respondent operates about 40 fast through or limited passenger trains daily between downtown Chicago and downtown Milwaukee, there being 20 of these fast or through trains in each direction daily, in addition to the local and "commuter" trains. These limited trains operate over the Skokie Valley Line, with five cars each, drawn by self-propelled units. The running time of these fast trains is one hour and forty-five

minutes, equalling the fastest trains of the Chicago and Northwestern Railway Company, which operates 15 through trains daily between Chicago and Milwaukee.

(b) The respondent and the Chicago and Northwestern Railway are in direct competition with each other in their through or fast passenger service, their limited service to Waukegan, and their suburban and "commuter" service.

(c) In connection with its passenger service, the respondent operates nine dining cars having seating capacities of 22 to 24 persons per car. These dining cars are used in the through Chicago-Milwaukee morning, noon and evening trains, and were included as part of respondent's service to compete in passenger service with the Chicago and Northwestern Railway and the Chicago, Milwaukee, St. Paul and Pacific Railroad between Chicago and Milwaukee.

(d) In addition to its Chicago-Milwaukee limited and local service, the respondent operates a fast or limited service from Chicago to Waukegan on its "Shore Line" with stops only at the main stations, and the local service between the same points.

(e) A fast and local service, totalling 16 trains daily is maintained on the Libertyville Branch from Mundelein to Lake Bluff, where connection is made with the "Shore Line" trains.

(f) Respondent publishes in its train time schedules connections with the trains of all steam lines, motor bus and electric lines at both Chicago and Milwaukee, including all the transcontinental roads, both east and west.

(g) The fast passenger trains of the respondent running from Milwaukee make convenient connections in Chicago with the Stout Air Lines operating to Detroit, Cleveland, and other eastern cities; also with the Universal Air Lines System to St. Louis and Kansas City; and with the Embry-Riddle Company to Indianapolis and Cincinnati.

(h) Respondent's passenger service is rendered under regulations and fares filed with and subject to the jurisdiction of the Interstate Commerce Commission.

(i) In Milwaukee and Waukegan street car service is furnished by the respondent, this service being separate and distant from its other passenger service. Different equipment is used and special state tariffs applied to the local fares charged.

(j) Passengers boarding a limited train without a ticket and paying cash fares are given receipts similar to those used by steam railroads, and if a train is boarded at an agency station, but without a ticket, the passenger is assessed an extra or "penalty" fare, as steam railroads do in such circumstances.

(k) The passenger service of the respondent is performed in comparatively small train units ranging from a single car to 4 or 5 cars per train. There are no single car trains operated by either of the paralleling steam railroads, the Chicago and Northwestern or the Chicago, Milwaukee, St. Paul and Pacific. Respondent operates 40 passenger trains daily between Chicago and Milwaukee. A substantial part of the main lines passenger service of respondent is performed over tracks laid in city streets. The main line trains of the re-

spondent into and out of Chicago run over the elevated structure of the Chicago Rapid Transit Company. The speed of trains of respondent is rigidly restricted at many places by state, city and village authority. Arbitrary stops are also required by such authority.

Respondent has inter-line ticket arrangements with steam railroads. In September, 1930, less than 4 per cent. of the total passenger revenue was derived from inter-line passenger business and the remaining 96 per cent. from passenger business local to respondent's line.

3. Merchandise Despatch Service.

The merchandise despatch service is performed by respondent in baggage type cars, most of which are motorized. This service is handled in trains consisting of one or two cars with a total maximum of 5 cars to the train. Respondent maintains several off-line freight stations within Chicago, at which shippers may deliver merchandise freight. The freight from these stations is transported to the rail station in specially built motor trucks. This is called the ferry truck service. *The revenue derived from the merchandise despatch service exceeds the revenue derived from all carload freight handled in freight equipment which is interchanged with steam railroads. More than 10 per cent.* of the total tons of freight handled by respondent is the merchandise despatch or less than carload freight.

4. Carload Freight Service.

(a) It is impossible for respondent to handle carload freight in standard railroad freight equipment on 31.47 route miles of track. This is 22.73 per cent. of

the total route mileage of respondent. Such impossibility is due to clearance conditions and franchise restrictions. Respondent has no interchange track with any steam railroad at Milwaukee or at Chicago, its two principal terminals. The nearest interchange track to Milwaukee with a steam railroad is at Racine, Wisconsin, about 20 miles distant. No freight cars containing less than carload freight are interchanged with steam railroads. Respondent has no reciprocal switching arrangement with a steam railroad at either Chicago or Milwaukee, or at any point except Racine, where it has switching arangement with one steam railroad.

(b) In 1930 the respondent *handled approximately 27,000 carloads of freight traffic*, 23,000 or 87 per cent. of which were interchanged with connecting steam railroads.

(c) During the month of September, 1930, carload freight traffic was handled by the respondent in cars interchanged with 69 different steam railroads and 31 different private car companies.

5. Methods of Operation.

(a) The respondent operates its trains under train rules substantially similar to the Standard Code of Train Rules of the American Railway Association. Its trains are operated under train orders, clearance cards, "meet" orders, changes in orders, rules as to superior and inferior trains, and in many other details as are trains of steam roads. Respondent's train despatching is done by telephone.

(b) Respondent serves industries directly from its line and industrial tracks. These industries receive and load solid cars from and to distant break-bulk points, which are picked up and given line-haul service. The incoming or "interline" freight and distant points comes in by steam railroad connections of the respondent and is distributed by respondent.

(c) Respondent's methods of business solicitation, its membership in tariff organizations, and in tariffs published and concurred in, are national and international in scope.

(d) Respondent's bills of lading, way-bills, and inter-line way-bills are the same as those used on steam railroads generally.

(e) Respondent is an associate member of the American Railway Association, a member of the Western Passenger Association, a member of the Bureau for the Safe Transportation of Explosives, and a member of the Western Weighing and Inspection Bureau. These are all regular steam railroad organizations.

(f) Respondent is a subscriber to the Code of Car Service Rules, the Code of Per Diem Rules, the Car Service and Per Diem Rules Agreement of the American Railway Association, the Master Car Builders' Rules, the Interchange Agreement of the American Railway Association, the Official List of Open and Prepay Stations, and the Consolidated Freight Classifications, all being rules entered into and promulgated for steam railroads generally.

(g) The track and roadbed of the respondent is maintained by section gangs, the foremen of which are housed in respondent's specially constructed building. The respondent maintains roadway maintenance equipment, consisting of gang or track inspection cars, hand cars, derrick cars, etc.

6. Traffic and Revenue.

(a) The passenger fares of the respondent are regulated by and are subject to the jurisdiction of the Interstate Commerce Commission.

(b) For the year 1930, the total freight and express revenues of the respondent were $1,384,547.58.

(c) The classification of commodities prescribed by the Interstate Commerce Commission for compiling freight statistics for steam railroads includes 157 commodities. During the years 1929 and 1930 the respondent did not handle 56 of these commodities. The steam railroads in the same territory handled substantially all of these commodities. Respondent handled practically no livestock, no grain, packing house products, poultry or eggs. Respondent has no grain elevators or stock yards on its lines.

Respondent derives 78 per cent. of its total revenue from passenger service. Class I steam railroads for the United States derive about 14.7 per cent. of their total revenues from passenger service. Respondent derives 22 per cent. of its total revenue from freight service, of which the greater part is derived from merchandise despatch service performed in the baggage type cars. Class I steam railroads derive 76.6 per cent. of their

revenue from freight traffic. Respondent derives 8.47 per cent. of its total revenues from the transportation of interline freight. Class I steam railroads derived more than 85.14 per cent. of their total revenues from the transportation of interline freight in 1928.

7. Corporate Organization.

The respondent has a corporate set-up similar to steam railroads, having a departmental arrangement consisting of an Executive Department, Operating Department, Traffic Department, Law Department, and Medical Department.

Respondent publishes tariffs by which it maintains through routes and joint rates with steam railroads. The law and tariff regulations of the Interstate Commerce Commission require the publication and filing of tariffs by all common carriers by railroad subject to the Interstate Commerce Act.

Exhibits and evidence of record which correctly portray the facts show that 112 electric railways filed tariffs with the Interstate Commerce Commission, which published freight rates applicable locally to those railroads, and that of these railroads 64 participated jointly with steam railroads in interline tariff and 42 participated jointly in interline tariffs with other electric railroads during the year 1919. The Spokane Inland Empire R. R. Company, an electric line, maintained tariffs in 1911 in which it participated generally in interline freight traffic with steam railroads between points throughout the United States. The Southwest Missouri Railroad Company during the years 1927 and 1928 par-

ticipated generally in interline freight traffic with steam railroads by means of published tariffs.

Respondent operates through a number of cities and towns under rights granted by franchises or ordinances. These restrictions, prohibitions and obligations are many and varied. In all but 2 of 14 towns through which respondent operates under franchises the operation must be by electricity. In all but 3 such towns steam operation is prohibited. In 5 safety stops are required. In 8 respondent must pave the streets between its tracks. In 7 respondent must stop at street intersection. In 9 respondent must light streets and crossings. In 4 respondent must remove snow. In 2 respondent must sprinkle the streets. In 6 freight operation is prohibited. In 5 respondent must carry policemen and firemen free of charge.

Respondent is required to pay a license fee to the city of Chicago of $50.00 annually for the operation of each car over the elevated structure of the Chicago Rapid Transit Company in Chicago, and to keep this license posted within the car. Respondent may under an ordinance recently enacted by the city council of Chicago and adopted by the people in a referendum vote, operate its trains in the new intra city subway transportation to be constructed within the city of Chicago.

Since July, 1916, when the Chicago North Shore & Milwaukee Railroad, the immediate predecessor of respondent, acquired the properties, the respondent and predecessors have issued securities aggregating $71,327,200 par value. Of that total $9,664,600 were issued by the predecessor company prior to March 1, 1920,

and the remainder have been issued since that date. All of these securities were issued upon the authority and with the approval of the regulating commissions of Illinois and Wisconsin. There were outstanding in the hands of the public as of April 30, 1931 a total of $42,935,608.07 par value of securities issued by respondent and its predecessors. Of that amount $4,000,000 in securities were issued prior to March 1, 1920, and $38,935,608.07 were issued since that date. There is in the treasury of respondent or pledged under the First and Refunding Mortgages a total of $9,291,800 par value of securities. In December, 1920, $2,500,000 par value of securities were issued by respondent upon the authority and with the approval of the regulating commissions of Illinois and Wisconsin. All securities issued by respondent since March 1, 1920, have been reported to the Interstate Commerce Commission in the annual report of respondent filed with that Commission. This report requires to be shown, and the respondent has shown, that the securities therein reported were issued under the authority and with the approval of the regulating commissions of Illinois and Wisconsin.

Since March 1, 1920, more than $239,000,000 par value of securities have been issued by electric railroads reporting to the Interstate Commerce Commission other than respondent without the approval or authority of the Interstate Commerce Commission.

The Interstate Commerce Commission has prescribed a uniform system of accounts for electric railways, which governs the accounting system of respondent. That Commission prescribes a different and more com-

prehensive classification of accounts for use by steam railroads. In March, 1913, Congress enacted the valuation act, Section 19a of the Interstate Commerce Act, 37 Stat. L., 701, which requires the Commission to ascertain and report the value of all property owned or used by every common carrier subject to the provisions of the act. The property of the respondent has not been valued by the Commission. The Commission has not reported the value of any independently operated electric railroad. The Commission has made tentative valuations or final valuations, of the property of all steam railroads, subject to the Interstate Commerce Act.

Respondent operates an electric railroad which is engaged in transporting state and interstate commerce between the urban communities of Chicago, Illinois, and Milwaukee, Wisconsin, and intermediate points in Wisconsin and Illinois. Respondent is not owned or controlled by any steam railroad system of transportation. It is not operated as a part of any steam railroad system of transportation. Respondent performs a street car service, a suburban service and an interurban service.

Since its organization respondent has been given the status of an interurban electric railway by official acts of construction by the Railroad Commission of Wisconsin, the state regulating body of Wisconsin, and by the Illinois Commerce Commission, the state regulatory body of Illinois. Each of these tribunals has assumed jurisdiction over the securities issued by respondent, of which fact the Interstate Commerce Commission has been apprised in the annual reports of the respondent

to that Commission. The Interstate Commerce Commission, by its failure to act, and by affirmative recommendations in its annual reports to the Congress of the United States, has given to respondent by contemporaneous construction the status of an interurban electric railway. In its 35th annual report to Congress for the year 1921 the Commission made the following recommendation:

> "We have no jurisdiction over the issuance of securities of a 'street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation.' Certain electric railways independently operated are engaged in the general transportation of freight in interstate commerce in addition to the transportation of passengers. The use of electricity as motive power for railways is rapidly increasing. Some electric lines correspond substantially to steam roads in all important particulars except that of motive power. Under Section 15a of the act we are given authority to include in groups of carriers for rate making purposes such interurban electric lines as are engaged in the general transportation of freight. It seems desirable that Section 20a of the Interstate Commerce Act be so amended as to indicate definitely the classes of electric railway companies subject to that section."

The Interstate Commerce Commission repeated that recommendation in its annual reports to Congress for the years 1922 to 1925, inclusive. In its annual report to Congress for the year 1929 the Commission made the following comments and recommendations:

"In our annual reports to the Congress for various years since the enactment of the amendments of 1920, we have recommended that Section 20a, relating to the issuance of securities, be so amended as to apply to electric railway companies engaged in the general transportation of freight. Experience in the administration of the act, as well as changes in the conditions affecting electric railway companies, seem to require that consideration be given to the general subject of the application of various sections of the statute to those companies."

Those recommendations were repeated by the Commission in its annual reports to Congress for the years 1929 and 1930.

Respondent has been informed by letter on two occasions since the year 1929 by certain officials of the Interstate Commerce Commission that unless it were advised to the contrary it need not file returns in response to certain orders made by the Commission designed to determine the recapturable income from railroads subject to Section 15a of the Interstate Commerce Act.

The court finds that the various photographs, charts, exhibits and diagrams introduced in evidence by plaintiff and respondent correctly portray the facts which they are intended to show.

The foregoing findings of fact are based upon the legal and competent evidence produced upon the trial rejecting all improper, irrelevant and incompetent parts thereof.

CONCLUSIONS OF LAW

The Court, upon the foregoing findings of fact, states the following as its conclusions of law:

1. The letter, as well as the spirit of the Interstate Commerce Act as amended by Transportation Act, 1920, clearly excludes from Section 20a of the Interstate Commerce Act, and from other sections thereof, independently operated electric railways. Congress there and elsewhere in the act described these railways as street, suburban and interurban electric railways not operated as a part of a general steam railroad system of transportation, and by doing so it adopted a descriptive term which had the sanction of time and common usage. Congress used substantially the same description in the Federal Control act, the Electric Railway Mail Pay act and in various sections of the Transportation act, 1920, and the Interstate Commerce act. The Supreme Court used the term "interurban electric railway" in *Omaha and Council Bluffs Street Ry. Company* v. *I. C. C.*, 230 U. S., 324, and in *Spokane & Inland Empire R. R. Co.* v. *U. S.*, 241 U. S., 344. Among the common characteristics of interurban electric railways, subject to the jurisdiction of the Interstate Commerce Commission unless specifically excluded by the language of certain sections of the Interstate Commerce act, are that they use electric power in the transportation of passengers or freight or both in intrastate and interstate commerce, occupy city streets and highways in addition to private rights of way, stop cars or trains at street intersections and country highways for the reception and discharge of passengers, maintain loading platforms and shelter sheds, without agents, for

passengers, have short radius curves and operate part of their system under municipal and village franchise authority and restrictions. Respondent has all of these characteristics.

2. The Court finds that the respondent is now, and has at all times since its organization been an interurban electric railway which is not operated as a part of a general steam railroad system of transportation, and that respondent is not now, and at no time since its organization has it been, a "carrier" or "corporation" within the meaning of those terms as defined in Section 20a of the Interstate Commerce act, and is therefore excluded from the provisions of Section 20a of that act.

3. The Court finds that the petition should be dismissed.

BY THE COURT.

(Signed) CHARLES E. WOODWARD,
United States District Judge,
Northern District of Illinois.

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN EQUITY
No. 10067

UNITED STATES OF AMERICA, PETITIONER,

v.

CHICAGO, NORTH SHORE AND MILWAUKEE RAILROAD COMPANY, RESPONDENT.

FINAL DECREE, MARCH, 1932

This cause came on to be heard upon final hearing for a permanent injunction upon the pleadings and evidence and was argued by counsel, and thereupon and upon consideration thereof, it is Ordered, Adjudged and Decreed,

That the petition be, and the same hereby is dismissed for want of equity.

Dated this 24th day of March, A. D. 1932.

(Signed) CHARLES E. WOODWARD,
United States District Judge,
Northern District of Illinois.